IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL APPEAL NO.173 SB OF 1996

DATE OF DECISION: SEPTEMBER 11, 2007

Jatinder Singh and others

.....Appellants

VERSUS

State of Punjab

....Respondent

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. D. S. Pheruman, Advocate,
for the appellants.

Mr. Shailesh Gupta, DAG, Punjab,
for the State.

Ms. Ishma Randhawa, Advocate.

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RANJIT SINGH, J.

Four appellants, namely, Jatinder Singh @ Babbu, Ravinder Singh, Harpal Singh and Gurbax Singh, stand convicted for offences under Sections 307 read with Section 34 and 450 IPC by the Additional Sessions Judge, Amritsar. The appellants have been sentenced to suffer RI for 7 years under Section 307 IPC coupled with fine of Rs.1,000/- and in default thereof, they were to further undergo RI for four months. The appellants were also sentenced to suffer RI for identical sentence upon their conviction under Section 450 IPC. The appellants have impugned the above said judgement and order of their conviction and sentence in the instant appeal.

The facts, in brief, are that tussle was going on between the

complainant and the appellants over a vacant plot of land adjoining the house of Baldev Singh (PW3). Gura Singh had put some loose earth on this plot with the intention to occupy the same. Baldev Singh went to the house of Gura Singh to complain about the same and told him to remove it. The plot in question was on a common land and was, thus, common property of the village. Gura Singh was having liquor with Ravinder Singh @ Choo when Baldev Singh went to him and asked him to remove the loose earth from the plot. Ravinder Singh then started grappling with Baldev Singh. He, however, was saved by some persons. Ravinder Singh left the place for his house hurling abuses and telling Baldev Singh that this fight would prove costly to him. Baldev Singh came back to his house and shared this incident with his wife. They went to sleep in the courtyard of their house. Around mid night, the appellants duly armed with respective weapons came to the house of Baldev Singh. An electric bulb was on in the courtyard. Appellant Ravinder Singh was armed with handle of the pump, while appellant Jatinder Singh was carrying Dater whereas appellants Harpal Singh and Gurbux Singh had dangs in their hands. They woke up. Ravinder Singh and others started inflicting injuries to him with their respective weapons. His wife, Swinder Kaur, raised alarm, which attracted Baldev Singh's mother and his son to the scene. Appellant Ravinder Singh gave a blow with handle of the pump on the left arm as well as on the left leg of Baldev Singh leading to fractures of the arms and legs. Ravinder Singh and Gurbux Singh allegedly tied hair of Baldev Singh by dividing the same into two parts and dragged him outside the courtyard. Having taken Baldev Singh to nearby pacca road, appellant Jatinder Singh

gave two blows with Dater from its reverse side first on his right arm and then on the right leg. This also resulted in fracture of arm and leg. Harpal Singh used dang, hitting Baldev Singh, victim, on his right side of chest. Similarly, Gurbux Singh gave a dang blow on the back of Baldev Singh. The occurrence was witnessed by Swinder Kaur and Jarnail Singh, PWs. Having caused injuries, all the appellants left the spot with their respective weapons. Baldev Singh could not move out of the house during night on account of fear and threat. He was taken to S.G.T.B.Hospital, Amritsar on the following morning and was got admitted there. He was operated upon and remained admitted in the hospital for about 3-4 months initially, followed by another admission for three months on a subsequent occasion. Statement of Baldev Singh, Ex.PE was recorded, on the basis of which formal FIR, Ex.PF/2 was registered under various Sections. Ultimately, the appellants were tried for offences under Sections 307, 450 IPC. They were convicted and sentenced as already noticed.

Mr.D.S.Pheruman, counsel for the appellants, has mainly confined himself to the plea that offence under Section 307 IPC is not made out against the appellants on the basis of evidence led and considering the seat and nature of injuries and so also the weapons of offence used. Mr.Pheruman would say that if the appellants had the intention to cause death of the victim, they were not expected to go to his house armed with dangs or handle of a pump. He also refers to a fact that one of the appellants though armed with Dater but did not use it from the sharp side and allegedly gave injuries from its reversed/blunt side. As per the counsel the

opinion of the doctor, which has mainly been relied upon by the trial Court to hold the appellants guilty of an offence under Section 307 IPC would also not advance the case of the prosecution. Doctor has opined that the injuries were grievous in nature and finally declared after operation that these were dangerous to life. This, according to the counsel, would not be enough to bring home the offence under Section 307 IPC.

Learned State counsel, on the other hand,however, submits that the prosecution has succeeded in bringing home the offence under Section 307 IPC alleged against the appellants. They could definitely be attribute the knowledge, which would be sufficient to maintain the conviction under Section 307 IPC. He is supported by the counsel representing the complainant.

In support, appellants' counsel has relied upon the case of ***Atma Singh Vs. The State of Punjab,*** 1982 (2) C.L.R.496. In this case the accused therein had caused injury with a knife on the chest of an injured. No intention to cause death could be proved and it was found that the accused had intended to cause grievous hurt to the injured. In this case also, as per the opinion of the doctor, the injuries were described as dangerous to life. The Division Bench of this Court held that term “dangerous to life” is synonymous with `endangering life' within the meaning of Clause 8 of Section 320 IPC. Accordingly, the conviction of the accused persons recorded under Section 307 IPC was altered to one under Section 326 IPC. The Court referred number of decisions of this Court and ultimately held as under:-

“We are of the view that the Court is not absolved of

> the responsibility while deciding a criminal case to form its own conclusion regarding the nature of the injury, Expert's opinion notwithstanding. The Court has to see the nature and dimension of the injury, its location and the damage that it has caused. Even when an injury is described as to be one which endangers the life the court has to apply its own mind and form its own opinion in regard to the nature of injury, having regard to the factors that should weigh with the Court, already mentioned. We are also firmly of the view that wherever a doctor describes an injury as `dangerous to life' and the nature of the injuries are such which could merit such a conclusion then such an injury has to be treated as `grievous hurt' of the description mentioned in first portion of clause 8 of Section 320 of the Indian Penal Code."

Reference is also made to the case of ***Pashora Singh and another Vs. State of Punjab,*** AIR 1993 Supreme Court 1256, where conviction was altered to 326 IPC from that under Section 307 IPC. In this case also, one of the injury was declared to be dangerous to life by the doctor. While holding that offence under Section 307 IPC is not made out, the Hon'ble Supreme Court held :-

> "In our view, in the facts and circumstances of the case, no offence under S.307 of the Indian Penal Code is held established against the appellant

Pashora Singh. According to the statement of Pal Singh injured him, Pashora Singh had first given a Gandasa blow on right knee of Amar Singh. Lahora Singh then gave Gandasa blow on the right hand of Amar Singh from the reverse side. Pal Singh thereafter states that he raised an alarm and tried to intervene. When Lahora Singh gave two Gandasa blows to him. Pashora Singh also gave a Gandasa blow on his head. According to the above statement of Pal Singh, two injuries on his head were inflicted by Lahora Singh and the third one by Pashora Singh. It is an admitted case of the prosecution that the accused persons had a grievance against Amar Singh and his uncle Malkiat Singh for having launched some security proceedings against the accused persons and they had come with an intention of taking revenge from Amar Singh and Malkiat Singh. According to the statement of Pal Singh, Pashora Singh had given a Gandasa blow on the right knee of Amar Singh and Lahora Singh also gave a Gandasa blow on the right hand of Amar Singh from the reverse side. Admittedly, the injuries on Amar Singh are found to be simple in nature and this clearly goes to establish that the accused persons had no intention of causing death of any person nor any injuries found on Pal Singh were stated to be sufficient in the ordinary course of

nature to cause death. According to Pal Singh, when he raised an alarm and tried to intervene, Lahora Singh inflicted two Gandasa blows and Pashora Singh gave third blow on his head and thereafter the accused persons ran away. In the circumstances mentioned above, we are clearly of the view that the High Court was not right in holding that the accused had an intention to cause the death of Pal Singh or the knowledge of possible death of Pal Singh. Only injury No.1 on the head of Pal Singh has been described as dangerous to life and the High Court has itself recorded a finding that the previous litigation between the parties had nothing to do with Pal Singh and it was not established as to which of the two accused had inflicted injury No.1 on the head of Pal Singh. Thus, in the above facts it cannot be held that Pashora Singh had committed any offence under S.307 read with S.34 of the Indian Penal Code. The appellant Pashora Singh in the facts and circumstances of the case can only be held guilty for an offence under S.326 read with S.34 of the Indian Penal Code."

I have heard the counsel for the parties. I am of the view that offence under Section 307 IPC is not made out. The Division Bench of this Court in Atma Singh's case (supra) rightly held that the Court is not absolved from the responsibility while deciding a criminal

case to form its own conclusion regarding the nature of injuries, expert's opinion notwithstanding. In order to arrive at proper conclusions, the Court has to see the nature and dimension of the injury, its location and the damage that it has caused. The Court thus has to apply its own mind and form its own opinion in regard to the nature of injury, even though the expert may have opined that the injury is “dangerous to life”. It is to be seen if the injuries in this case were such that these would attract offence under Section 307 IPC. All the injuries in this case are on arms and legs and no efforts were made by the appellants to cause any injury on any vital part of the body. It is to be seen if the appellants could be attributed an intention to cause death. The appellants had allegedly gone to the house of the victim duly armed with weapons and had attacked him. If they had intended to finish him, they would not have left him in the manner they did. Even otherwise, they could have very well caused him injuries on some vital parts of the body. They could even have armed themselves differently if they had intended to cause greater harm like death. Under these circumstances, only the opinion of the doctor that the injury caused was dangerous to life would not be enough to make out a case for an offence under Section 307 IPC. The injuries caused to the victim are grievous in nature. These would attract the offence under Section 325 IPC. Though one of the appellant was having Dater but he never used the same from its sharp side and used it from reverse side. The injuries were inflicted on legs and arms. Though the blow led to causing fractures but attack was not pursued to cause any fatal harm. It can thus be said that the appellants had no intention of causing death or knowledge of

possible death of the victim. It can thus be held that no offence under section 307 IPC is made out against the appellant on the basis of evidence. The appellants more appropriately can be held guilty of an offence under Section 325 IPC. The appellants are thus acquitted of offence under Section 307 IPC and are convicted of offence under Section 325 IPC. Since the conviction of the appellants under Section 307 IPC is not being upheld, they cannot be made liable for an aggravated form of house trespass to commit offence punishable with imprisonment for life under Section 450 IPC. They would, however, be guilty of the offence of house trespass in order to commit offence punishable with imprisonment under Section 451 IPC and it is accordingly held. The appellants are further acquitted of offence under Section 450 IPC and instead are convicted for offence under Section 451 IPC.

The sentence as awarded to the appellants under Sections 307 and 450 IPC can also not stand as the conviction of the appellants being now under Sections 325 and 451 IPC. Mr.Pheruman pleads that incident is of 1993. The appellants were convicted in the year 1996 and their appeal is pending before this Court since then. According to the counsel, the appellants have already undergone sentence of 6 months 12 days by now. He accordingly pleads that sentence be remitted to the period already undergone. This prayer of Mr.Pheruman is objected to by the State counsel as well as complainant's counsel. Considering the fact that the appellants have faced protracted trial and are facing this prosecution for the last 14 years, the period of sentence awarded to them is reduced to the period already undergone by them. The fine

awarded, however, will stand enhanced to a sum of Rs.13,000/-each. The fine, when realised, would be paid to the victim. In default of payment of fine, the appellants would undergo sentence of three years R.I.

The appeal is partly allowed in the above terms.

September 11,2007 **(RANJIT SINGH)**
khurmi **JUDGE**